

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2893 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA.

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

TARACHAND PITAMBER PALAN

Versus

STATE OF GUJARAT

Appearance:

MR KS JHAVERI for Petitioners

Mr. Dhaval C. Dave & Ms Ami Yagnik, Assistant
Government Pleaders for the respondents

CORAM : MR.JUSTICE R.BALIA.

Date of decision: 12/09/96

ORAL JUDGEMENT

Rule. Service of rule is waived on behalf of the respondents.

Petitioners are running a cinema house and are liable to be assessed to entertainment tax under the Gujarat Entertainments Tax Act, 1977. The cinema house

is situated within Municipal Borough Bhuj. Dispute raised in this petition concerns the validity of the rates at which entertainment tax is being levied on the admission to the cinema house at Bhuj.

Section 3 of the Gujarat Entertainments Tax Act, 1977 which has bearing on the question raised reads as under:

"3. Tax on payments for admission to entertainments.(1) There shall be levied and paid to the State Government on -

(a) every payment for admission to an entertainment, other than the payment for admission referred to in clause (b), a tax, at the following rates, namely:-

(I) within the limits of a local area, the population of which as ascertained at the last preceding census and notified by the State Government in the Official Gazette after such census is more than 1,00,000,-

(i) out of the first 100 paise of the payment for admission or any part thereof, 50 per cent of such payment;

(ii) out of the next 100 paise of the payment for admission or any part thereof, 55 per cent of such payment.

(iii)out of the next amount of the payment for admission to any extent, 65 per cent of such payment.

(II) within the limits of a local area, the population of which as ascertained at the last preceding census and notified by the State Government in the Official Gazette after such census, is more than 50,000 but not more than 1,00,000-

(i) out of the first 100 paise of the payment for admission or any part thereof, 47.5 per cent of such payment;

(ii) out of the next 100 paise of the payment for admission or any part thereof, 52.5 per cent of such payment.

(iii)out of the next amount of the payment for admission to any extent, 62.5 per cent of such payment.

(III) in any other area (not being a designated area or a specified area in so far as an entertainment by cinema is concerned)

(i) out of the first 100 paise of the payment for admission or any part thereof, 45 per cent of such payment;

(ii) out of the next 100 paise of the payment for admission or any part thereof, 50 per cent of such payment.

(iii)out of the next amount of the payment for

admission to any extent, 60 per cent of such payment."

Under Section 3 of the Gujarat Entertainments Tax Act, 1977, ('Act' for short) which is a charging section, tax is to be levied and paid to the State Government on every payment for admission to an entertainment at the rates prescribed therein. Separate rates have been prescribed for different local areas depending on the population of the said local area, which is to be determined on the basis of the preceding census and notified by the State Government in the official gazettee. The highest rates have been prescribed where such population is more than 1 lakh and receding rates have been prescribed for local areas having population of more than 50,000 but not more than 1 lakh and other areas. The authorities entrusted to levy and collect the entertainment tax are seeking to recover entertainment tax from the petitioners in respect of entertainment provided at the cinema situated at Bhuj under clause (I) of Section 3(1)(a), while the petitioners contend that their case falls within clause (II) of the aforesaid Section. Population of Bhuj as per the published figure of the last census, is 1,02,170.

Contention of the petitioners is that population published in the census publication refers to population of Bhuj town and not of the local area Bhuj as defined under the Act. Geographically the area of Bhuj for which population has been published consists of two local areas and a part of which falls within the local area covered by the Bhuj Municipal Borough and part of that area is covered by cantonment area within the meaning of the Cantonment Act, 1924. If the population of the local area within which the cinema is situated only is taken as basis for levy of tax, it is below 1 lakh. For this purpose, support is drawn from the notification dated 31st December 1993, an order dated Nil of the State Government determining the wards of the municipal borough of Bhuj for the purpose of election. Wards are to be determined as per population of Municipal Borough. Population for the purpose of determining ward of Bhuj Municipal Borough has been taken to be 91023. Basis for taking this figure of population has been stated to be last figure published under the Census Act, 1948, for 1991 census population. That order is produced at Annexure "D" on the record.

Existence and correctness of order Annexure "D" has not been denied or disputed. Moreover, it has been contended by the respondents that the figures of

population stated in Annexure "D" cannot be considered for the purpose of entertainment tax, because that was in respect of determining the wards of the municipality for the purpose of holding election and, therefore, determination of population of the municipality vide Annexure "D" is not relevant for the purpose of levying tax under Section 3 of the Act and for that the only relevant material is publication made under the Census Act by the State Government.

The court, by its order dated 31st August 1996, directed the respondents-State to explain the discrepancy that existed between the census figure for the purpose of entertainment tax and census figures taken for the purpose of Annexure "D". After seeking instructions it is stated by learned Assistant Government Pleader that because figures published under Census Act for Bhuj includes population residing within Bhuj Cantonment area as well as Bhuj Municipality, therefore, for the purpose of finding out population of the municipality, population attributable to the area comprising in cantonment area has to be excluded and by that methodology, the figures of population of the municipal area of Bhuj has been determined.

This explanation corroborates the contention raised by the petitioners that census figures published in the official publication represents the population of Bhuj town which comprises of two local areas within the meaning of the Entertainments Tax Act.

Section 3, which is a charging section, both authorises levy of entertainment tax as well as rate on which such tax is to be assessed and collected. The taxing event is admission to entertainment. The rate of levy on such admission depends upon locality wherein it is situated. Where the locality concerned wherein entertainment is situated is a 'local area', tax at specified rates in clauses I and II of Section 3(a) shall be chargeable. If the entertainment is situated in any area which is not a local area, the rate of tax shall be as specified in clause III of Section 3(a). Where entertainment is situated within local area different rates of tax has been provided depending upon the population of the local area. Population of the local area is to be ascertained as per the last published figures of the population for that local area by the State Government in Official Gazette as per last census under the Census Act.

Local area has been defined for the purpose of

the Entertainments Act under Section 2(f) of the Act, which reads as under:

(f) 'local area' means-

(i) a City as constituted for the time being under the Bombay Provincial Municipal Corporations Act, 1949 (Bom. LIX of 1949);

(ii) a municipal borough or a notified area as constituted or as deemed to have been constituted for the time being under the Gujarat Municipalities Act, 1963 (XXXIV of 1964);

(iii) a gram, nagar, taluka, district or specified area as constituted or as deemed to have been constituted for the time being under the Gujarat Panchayats Act, 1961 (Guj. VI of 1962);

(iv) a cantonment as constituted for the time being under the Cantonments Act, 1924 (II of 1924);"

It is clear that the basic unit for the purpose of determining rates at which the tax is to be levied under the Act is Local Area within which the entertainment is situate, and an entertainment or cinema cannot be situated simultaneously in two local areas. Relevant population figures for the purpose of invoking clause I or II or III of Section 3(1)(a) can only be population of that local area. It is also clear that there is no authorisation for clubbing population of two local areas, which independently exist for the purpose of determining the rate of levy of tax. Local area has been defined to mean either a city as constituted for the time being under the Bombay Provincial Municipal Corporations Act, 1949, or a municipal borough or a notified area as constituted or as deemed to have been constituted for the time being under the Gujarat Municipalities Act, 1963, or a gram, nagar, taluka, district or specified area as constituted or as deemed to have been constituted for the time being under the Gujarat Panchayats Act, 1961 or a cantonment as constituted for the time being under the Cantonments Act, 1924. It is not in dispute that Bhuj township is not a city as constituted under the Bombay Provincial Municipal Corporations Act, 1949 nor a gram, nagar, taluka or district or specified area constituted or as deemed to have been constituted as such under the Gujarat Panchayats Act, 1961. It is common ground that the entertainment in question viz. cinema is situated at a place which is part of area constituting Bhuj Municipality under the Gujarat Municipalities Act, 1963, and admission thereto is subject to levy of tax at rates specified under clauses I or II of Section 3(a) on the basis of its population.

It is also not in dispute that the area for which population has been published in the census figures partly falls within the municipal borough constituted

under the Gujarat Municipalities Act, and partly in cantonment area as constituted under the Cantonments Act, 1924. On this premise, it has to be held that the respondents are seeking to recover tax on the basis of the last preceding census in the case of Bhuj which constituted an amalgamation of two local areas and only if population of two local areas is taken together it is more than 1 lakh, else it falls below one lakh.

A close reading of Section 3 makes it further clear that the primary factor for determining the rate of tax to be levied is the local area within the limits of which such entertainment is situated. Ascertainment of population of that area comes subsequently for determining whether it falls in sub-clause (I) or (II) or (III) of section 3(1)(a). For the purpose of ascertainment of population, that local area is only relevant. One cannot travel beyond local area of Municipal Borough or other local area as defined and include the population which is habitated beyond that local area for the purpose of ascertaining the population of a local area for which the rates of the tax to be levied. For ascertaining the population of the local area, the census figures are statutorily provided as basis. The provision casts a duty on the concerned authority to ascertain or find out the population of local area in consonance with officially published figures of population of that local area. But if official published figures are not of the local area, the taxing authority is not denuded of its duty to ascertain the population on the basis of available material and collect tax on that basis.

Population is determined with respect to local area and not the local area is to be determined with respect to population. In a given case, if population figures under the Census Act do not give figures of population of the local area concerned, but indicates the population of an area not corresponding to the local area for the purpose of Entertainments Tax Act, a procedure will have to be adopted by the competent authority for finding out the population of that local area for which the rate of tax is to be applied. Foundation for such determination will be the last preceding census.

Contention that it is impossible to make such ascertainment cannot be accepted in view of the fact that in fact the State Government has undertaken that exercise for the purpose of determining population of the same municipality with which we are concerned in this case for

the purpose of holding elections and delimiting the wards for that purpose. In the order at Annexure "D", it has been clearly stated that the basis for determination of population of Bhuj Municipality is the last preceding census held in 1991. The State Government itself has adopted a methodology for excluding the population residing outside the local area, Bhuj Municipality for the purpose of election within that local area. It cannot be said that for the purpose of Entertainments Tax Act, necessary methodology is not possible to be adopted where publication under the Census Act does not indicate the population of Local area concerned but indicates cumulatively a disjunctively population of one or more local areas. May be local area consists of one or more township, villages, gram, nagar. In that event, for the purpose of levy of entertainment tax on entertainment situated within that local area, necessary additions will have to be made. Likewise, if in the published figures as per the last preceding census of any area, population of more than one local area has been included, necessary adjustments shall have to be made in those publication to arrive at the figure of population so that tax to the extent permissible by the Statute can be levied and collected.

In this view of the matter, I am of the opinion that in case where the population figures published by the State Government under the Census Act, 1948, do not refer to local area concerned but concerns of population of more than two local areas jointly, publication simpliciter cannot be the foundation for determining the rates of tax. Such rates shall have to be found on determination of population confined to local area within which entertainment is situated. Since, in the present case, the State Government has determined the population of the local area on the basis of last preceding census under the Census Act, 1948 to be below 1 lakh, under authorised levy the rate at which tax can be recovered from the petitioners squarely falls under clause (II) of Section 3(1)(a).

In the result, the petition succeeds. The respondents are directed to levy and collect henceforth from the petitioners at the rate based on the calculation of population of Bhuj Municipality area as per Annexure "D" until those figures are replaced by another proper determination. Rule is made absolute accordingly. There shall be no order as to costs. Direct service is permitted.

(swamy)